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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION

10 UNITED STATES OF AMERICA,) Case No. CV 06-00123-RMT
11 Plaintiff,) CR 89-00438-RMT
12 vs.) ORDER DENYING MOTION
13 KENNETH IRVIN COUNCE,) FOR RECONSIDERATION
14 Defendant.)
15 _____

16 This matter is before the court on the motion by defendant Kenneth Irvin
17 Counce filed September 17, 2008 purportedly pursuant to Rule 15(c)(2) of the Federal
18 Rules of Civil Procedure seeking leave to amend his petition for writ of habeas corpus.

19 This action was commenced on January 6, 2006 by the filing of
20 defendant's petition for writ of habeas corpus. By order filed March 1, 2006, this court
21 deemed this action to be a motion for relief pursuant to 28 U.S.C. § 2255. Thereafter,
22 upon finding that this motion was a "second or successive" motion under 28 U.S.C.
23 § 2255 and, therefore, required that defendant first obtain permission from the Court
24 of Appeals authorizing this court to consider it, this court denied relief on March 7,
25 2006. Although the record does not reflect when, sometime during the pendency of
26 this action, defendant twice petitioned the Court of Appeals for a writ of mandamus,
27 both of which were denied on June 14, 2006. Rehearing was denied on August 7,
28 2006.


1 Now, after the lapse of two years, defendants seeks to reopen this case.
2 Although brought pursuant to Fed. Rule of Civ. Proc. 15(c)(2), defendant actually
3 seeks reconsideration of this court's denial of relief. By this motion, defendant again
4 challenges his arrest complaining that he was originally arrested for unlawful flight to
5 avoid prosecution but was, instead, prosecuted on three counts of armed robbery and
6 three counts of use of a firearm during a crime of violence. Defendant also repeats
7 his challenge to the use of photographs in his identification and his ineffective
8 assistance of counsel claim.

9 Because these claims were previously raised by defendant and denied
10 by this court, reopening of this case or reconsideration of the denial of relief herein is
11 unwarranted. Moreover, for the same reason this court on March 7, 2006, denied
12 relief as a "second or successive" motion under 28 U.S.C. § 2255, this newly filed
13 motion also should be denied.

14 Accordingly,

15 IT IS ORDERED that the motion by defendant for leave to amend
16 pursuant to Fed. Rule of Civ. Proc. 15 and/or for reconsideration is denied.

17 Dated: November 5, 2008

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20 ROBERT M. TAKASUGI
21 United States District Sr. Judge
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